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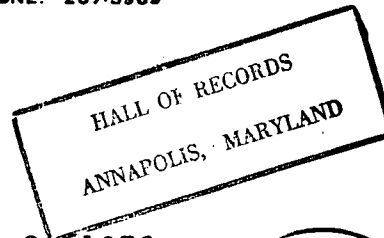
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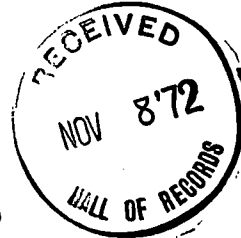
STATE OF MARYLAND
GOVERNOR'S COMMISSION TO REVISE
THE ANNOTATED CODE
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November 2, 1972

REPORT NO. 2C



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TO: THE LEGISLATIVE COUNCIL OF MARYLAND

SUBJECT: NATURAL RESOURCES ARTICLE,
TITLE 4 - FISH AND FISHERIES

In Report No. 2B, dated September 12, 1972, this Commission submitted to the Legislative Council drafts of Titles 8 and 9 of the Natural Resources Article. With this Report, we submit the draft of Title 4, entitled "Fish and Fisheries," which the Commission approved at its October 23, 1972 meeting.

Title 10, entitled "Wildlife," which is the final title of the Natural Resources Article, still remains to be submitted to the Council. The Commission currently is drafting this title and anticipates submitting it by December 1, 1972.

Similar to the previously submitted drafts of Titles 8 and 9, the draft of Title 4 includes all relevant 1972 legislation. Also, the draft incorporates and reflects already established style and revision decisions of the Legislative Council Joint Committee on Revision of Article 66C as to previously considered titles of the Natural Resources Article.

The sections of Title 4 presently appear in Article 66C of the Code. The scope of some of the present Code sections relevant

to Title 4 relate to both the subject areas of fish and fisheries, and game and wildlife. This reflects the fact that both areas of law previously were administered under the same State governmental unit. In the draft, the Commission has dissected these particular Code sections retaining the fish and fisheries provisions for this title and excluding those for inclusion in Title 10 - Wildlife. This treatment conforms with the reorganization of the Department of Natural Resources under Chapter 348, Acts of 1972, which created a separate Fish and Fisheries Administration, and a Wildlife Administration within the department.

Title 4 contains 12 subtitles. In addition to subtitles containing definitions, provisions concerning organization and authority of the department, and interstate compacts, there are separate subtitles concerning provisions dealing with licensing, regulation and supervision of fishing and fish in the waters of the State in general, those relating specifically to fishing and fish in nontidal waters, and those relating specifically to fishing and fish in tidal waters. Also, there are separate subtitles concerning provisions specifically pertaining to crabs, lobster and terrapin, oysters and clams, and oyster and clam culture.

In large part, the revisions made only are stylistic and organizational. Each revisor's note accompanying a section indicates specifically what changes are made and the rationale for them. However, the Commission would like to bring to the Council's particular attention the following points.

- 1) Page 1, §4-101(b). This subsection sets forth a new definition of the word "catch" applicable throughout the entire

Title. It is used to avoid the string of terms in the present statutes which refer to exercising dominion and control over fish.

2) Page 1, §4-101(d). This subsection sets forth a new definition of the word "fish" applicable throughout the entire Title. The definition is created in response to the ambiguity of terms referring to fish presently used in the statutes. The Fisheries Administration staff assisted in formulating this definition. The word "fish" is used whenever intended in a general and all encompassing sense. Whenever, a particular provision relates only to one or more types of fish then only the name of the particular type of fish is used. Also, the broad definition is not necessarily applicable to the use of the word in the various compacts in this title since, as interstate compacts, they are in no way revised.

3) Page 3, §4-101(i). This subsection sets forth a broad definition of the word "person" applicable throughout the title. It is derived in part from Article 66C, sections 112(a), 200, 234 and 696(m). It is the same definition approved of for Title 8 - Water and Water Resources.

4) Page 4, §4-101(j). The definition of the term "resident" is derived from Article 66C, section 112(t) which is applicable to fishing in nontidal waters. By placing the definition in subtitle 1, its application is expanded to pertain to the provisions concerning fishing in tidal waters as well.

5) Page 5, deletion of Article 66C, §201. The Commission proposes deleting the statutory provision which defines certain tidal and nontidal boundaries because it is obsolete. Section 201, while

not repealed in the Code, was superseded by departmental regulations adopted pursuant to Article 96A, section 8, which section was enacted subsequent to Article 66C, section 201. Inadvertently, Article 96A, section 8 was repealed by Chapter 348, Acts of 1972, thereby appearing to undermine the validity of the present regulations. The Commission understands that when Article 96A, section 8 was enacted in 1964, it was a result of legislative determination that fishing tidal and nontidal boundaries should be set by administrative regulation and not statute. The question is raised whether a provision should be added to cure the error repealing section 8 in order that this policy may continue.

6) Pages 57-64, §§4-401 - 4-408. These sections are new language derived from Article 66C, section 186-194. These present sections concern State Game refuges and hunting grounds. The provisions relating to fish and fisheries are retained. The other provisions will appear in Title 10 - Wildlife. Language is added to these sections making reference to any area of land as well as any area of water. The department advises that in some instances it is necessary and desirable also to acquire land when establishing a fish refuge or hatchery or constructing necessary accompanying buildings and facilities.

7) Pages 70, 73, 74, 78 and 79, §§4-502; 4-503; 4-505; 4-509. While a uniform penalty provision for Title 4 appears as section 4-1201, similar to that approved of for other titles, specific penalty provisions more severe than the uniform penalty either in terms of fine or imprisonment, are retained. This conforms with the commissions' prior policy. Proposed §§4-503; 4-505 and 4-509 are

examples of this.

8) Page 82, §4-602. This section is derived from Article 66C, section 115 of the Code. The provisions relevant to fish and fisheries are dissected from those concerning game and wildlife. The latter provisions are relegated to Title 10 - Wildlife. In subsection (b) of §4-601, the new language requires only that the petitioners be 50 State residents who hold valid anglers' licenses. The present language of §115(b) states, "Upon written petition of fifty residents of the State, at least 25 of whom shall hold valid hunter's licenses or angler's licenses and at least 25 of whom shall be bona fide farmers actually residing on a farm may propose ---". The Commission has excluded the reference to hunters and farmers as irrelevant to the purpose of petitioning to propose rules and regulations concerning fishing. This is an example of the type of dissection revision and drafting which appears in this title.

9) Page 87, §4-604(b). §4-604(b) concerning angler's licenses, retain the definition of "resident" presently set forth in Article 66C, section 219(a). This 6 month residency requirement differs from other provisions which require either a 12 month period or are silent as to any time limit. The question is raised whether a uniform residency requirement should be established for this title. Present section of Article 66C requiring Maryland residency are as follows:

- a) Present §207A - trout stamps - no time limitation
- b) Present §298 - license to operate nets and seines - 12 months

- c) Present §322 - crabber's license - no time limitation.
- d) Present §700 - oyster tonging license - 12 months.
- e) Present §702 - oyster dredging license - 12 months.
- f) Present §712 - clam license - 12 months.

10) Page 88, §604(c). This subsection establishes the minimum age requirement to obtain an angler's license at 16 years of age or over. Other license provisions in the title differ with reference to such minimum age requirements. In addition, there is no uniformity of age requirement for senior citizens who are eligible to pay only \$1.00 as a license fee. Provisions now refer to both age 64 and 65.

The question is raised whether there should be a uniform minimum age limit for obtaining a license and a uniform age for eligibility to pay the reduced license fee. Present sections of Article 66C which establish age requirements are as follows:

- a) Present §207A - trout stamps

Persons over 65 years pay only \$1. Everyone else pays \$2.50.

- b) Present §298 - license to operate nets and seines

No age preferences.

- c) Present §322 - crabber's license

Persons over 64 years and under 14 years not required to pay license fee.

- d) Present §700 - oyster tonging license

Persons over 64 years not required to pay license fee. Persons under 14 years not required to obtain license.

- e) Present §702 - oyster dredging license

No age preferences or license fee required.

- f) Present §712 - clam license

Persons over 64 years not required to pay fee.

Persons under 14 not required to obtain license.

11) Page 87, §4-604(b). The exemption from the residency requirement for certain property owners on Deep Creek Lake in Garrett County is deleted as unconstitutional in light of Bruce v. Director, 261 Md. 585 (1971).

12) Pages 88-89, §4-604(d)(1). Reference to the spouse of the landowner or tenant is added to include such person in the stated exception. This appears both equitable and egalitarian if the exception is to be retained, since it now applies to the children and spouses of children of the landowner or tenant.

13) Page 111, §4-613(b). This subsection provides that if a person is convicted of fishing without an angler's license or using someone else's, the license is confiscated and both the license holder and user are barred for a year from procuring another one. The question is raised whether provision should be made to protect a license holder who loses it or has it stolen.

14) Page 140, §4-701. This section, based upon present Article 66C, section 112C, section 112C(a) as amended by Chapter 656, Acts of 1972, grants the Secretary authority under certain procedures to promulgate rules and regulations pertaining to catching, possessing, selling, purchasing, transporting, or exporting tidal water fish contrary to present statutory provisions. In order to put the Code user on notice of this fact, new sections are added

to other subtitles which repeat the language of §4-701. For example, see §§4-801, 4-901, and 4-1001.

15) Pages 144-148, §§4-703 and 4-704. Present inconsistent language is used in Article 66C, §§262 and 298 of the Code as proposed §§4-703 and 4-704, respectively, as to qualifications to fish with nets in tidal waters. Section 262 refers to any landowner in the State while §298 refers to one who owns water front property.

In addition, §262 refers to a "citizen" of the State while §298 uses the term "resident".

Should these inconsistencies be remedied?

16) Page 153, §4-705(b). The provisions of this subsection protect the commercial net fishing license of any holder inducted or enlisted in the armed forces or employed in essential war industries due to war. It appears the subsection was enacted in light of World War II. The Commission has revised it to refer to any war. The question is raised whether the provisions also should apply to any one inducted or enlisted in the armed forces during peacetime.

17) Page 196, §4-717(c). Language is added to this subsection making reference to Cecil County since all of the tributaries mentioned lie in that county. There are several Mill Creeks in the State; however, it is presumed the Mill Creek referred to is that also in Cecil County.

18) Page 215, §4-727(c). Reference in this subsection to the dam on Herring Creek partially constructed and to be completed is deleted since it does not exist.

19) Page 223, §4-731(b). This subsection prohibits a person from buying any striped bass caught in State waters from another person other than a licensed commercial fisherman or wholesaler or retailer of fish. This sets up a malum prohibitum crime. However, a person may be guilty of violating this subsection without intending to do so. The question is whether it should be changed to a malum in se crime by adding the word "knowingly".

20) Page 223, §4-731(b). The scientific name for deletion here and elsewhere in the title, other scientific names also are deleted. In part this is due to the fact that scientific names of fish change occasionally thus necessitating future revision. Also, unless the scientific name has a particular substantive effect on the statutory provisions, its use is superfluous and confusing to the Code user. In contrast, see page 284, §4-1001(p) wherein the scientific name is used for soft-shell clam. The purpose is for law enforcement to keep other undesired species out of the waters of the State.

21) Page 246-254, §§265(e), 295(c), 306, 307, 309, 311, 312, and 313 of Article 66C, are proposed for deletion having been superseded by the provisions of the Potomac River Compact of 1958. The compact, which appears as §4-306, gives the Commission exclusive jurisdiction to regulate fish in the Potomac River area defined in the compact.

22) Page 255, §§4-801(c) and 4-802. These sections are new language intended to clarify for the Code user that the statutory provisions concerning crabs pertain only to the blue crab species and every stage of its life cycle. The statutory scheme and provisions

concerning crabs pertain only to the blue crabs species and every stage of its life cycle. The statutory scheme and provisions of subtitle 8 are drafted to relate only to this type of crab.

23) Page 265, §4-808. In this subsection and throughout subtitle 8, the staff has deleted the suffix "shell" when referring to hard or soft crabs. This is done to be consistent with the present language retained in sections 4-807 and 4-809 which use the terms soft and hard crabs. In addition, the department advises the proper term does not include the suffix "shell".

24) Page 278 and 374, §§4-1001(c) and 4-1101(b). The definition of Chesapeake Bay is revised by deleting the language which excludes waters lying outside the territorial limits of any county. As a result of the Bruce decision, the distinction used in the present language between county waters and the waters of the Chesapeake Bay is no longer applicable.

25) Page 279 and 375, §§4-1001(d) and 4-1101(c). The definition in the subsections of "county waters" is retained as viable even in light of the Bruce decision. References are made in the Code to county waters in a geographical rather than residency context such as in §§4-1008(b) and 4-1010 for example.

26) Pages 281-284, §4-1001(i), (j), (k), (n), (o) and (q). These subsections are new definitions created for assistance of the Code reader in understanding the meaning of the various terms used.

27) Page 288, §4-1004. This section presently appears as Article 66C, section 698(b) of the Code. The section was amended in 1971 to establish certain uniform licensing provisions in the State for shaft and patent tonging and dredging. The effect was to

supersede those inconsistent provisions of sections 700, 702, 703, 712, 712A, and 713(b) of Article 66C, concerning such licenses. Accordingly, these sections of the Code are proposed for deletion on pages 314-321, 344 and 362.

28) Page 303, §4-1011(a). The reference in the present statute to Lighthouse Lump is deleted since the point does not appear on departmental charts. Instead the reference "Entrance Lump" is used as the actual intended point.

29) Page 306, §4-1013(a). Language is added making reference to "any law enforcement officer" in this and other sections of this Title. Under Article 66C, section 123, other police officers and sheriffs are authorized to enforce State fish laws.

30) Page 314, §4-1014. The word "unlawful" in the present section is deleted as inconsistent with the provisions of the section. The department advises it was an inadvertence.

31) Page 321, §4-1015(a). In this section and throughout this Title the word "bar" is used instead of bed and bar since both terms are synonymous.

32) Page 329, §4-1017. In subsection (a) the reference to the oyster packers' and dealers' license being in the form of a contract is deleted as obsolete. It originally was enacted as part of a previously repealed provision establishing a contract between the licensee and the State. In subsection (d) the reference to oyster fund, and in other provisions reference to the clams fund, are changed to Fisheries Research and Development Fund which is the proper nomenclature.

33) Page 344, §4-1022. Article 66C, section 698(g) as it

appears in the Michie Code omitted the word "except" before Worcester County as the statute read when enacted by Chapter 707, Acts of 1955. The correction is made thereby changing the thrust of the section.

34) Page 390, §4-1103. Language is added to subsection (b) requiring publication in a newspaper in every county in light of the ^{which} Bruce decision/applies the statute to residents of the entire State.

35) Page 394, §4-1103(e). The provision requiring 50% of all seed oysters to be planted in the county where the seed area is located has been retained. The question is raised whether the rationale underlying this provision is negated by the Bruce decision.

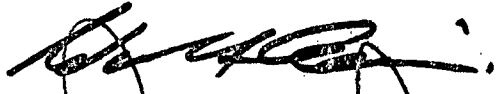
36) Page 451, §4-1203. This is a new uniform section, derived from other similar present sections, which authorizes law enforcement officers to seize fish in the course of arresting a person who violates the provisions of this title.

37) Page 451, §4-1204. This is a new uniform section derived from other similar present sections, which authorizes seizure and forfeiture of any unlawfully used devices, equipment and property. As phrased, the Court has the discretion to declare the seized items forfeitures. Notwithstanding Article 26, §155 of the Code which provides that all forfeitures are remitted to the District Court system, the new section declares the forfeitures become the property of the department for its own official use or sale. The ^{Chief} Clerk of the District Court advises the Commission to date there have not been any incidences of the court receiving such property. The court does not feel it has the facilities to handle this situation if it occurred.

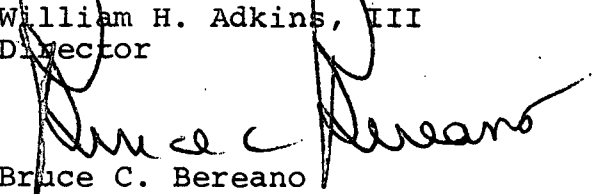
A question is raised whether a provision should be added similar to Chapter 659, Acts of 1972, amending Article 27, §297, which precludes seizure and forfeiture of conveyances under certain circumstances.

38) Page 455, §4-1205. This is a new section which empowers a court to revoke or suspend any license issued under this title to any person who, while using the license, violates any provision of this title, or rule or regulation promulgated pursuant to it. At present, the court has this authority with regard to licenses to cull oysters, and dredge the Chesapeake Bay. In addition to this judicial authority there are present provisions which allow the department administratively to revoke or suspend a license under certain circumstances. For example, see §§4-613, 4-707 and 4-1026. One question raised is whether such authority should be vested both with the court and the department or only one of them.

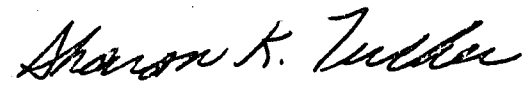
Respectively yours,



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